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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,125	09/15/2003	Shawn P. Wertz	WGH2418	6462
44088	7590	11/02/2005	EXAMINER	
SEAN KAUFHOLD P. O. BOX 89626 SIOUX FALLS, SD 57109			KHAIRA, NAVNEET K	
			ART UNIT	PAPER NUMBER
			3754	
DATE MAILED: 11/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

8

Office Action Summary	Application No. 10/661,125	Applicant(s) WERTZ ET AL.	
	Examiner Navneet Sonia Khaira	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct 11, 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, filed October 11, 2005, with respect to claims 1-9 have been fully considered and are persuasive. The finality of the office action mailed on September 9, 2005 has been withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8,10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop (US 3,017,056) in view of Monten (US 4,566,313).

Referring to claims 1 and 10, Bishop discloses an aerosol can support and actuating device comprising (Col. 1 lines 19-24):

an elongated pole(1) having a bottom end and a top end (Col. 1, line 54),
the top end being open, an aperture extending (Col. 1, line 50) into an interior of
the pole(1),

the aperture (Fig 2, Col 1, lines 62-65) being positioned nearer the bottom end than the top end;

an elongated tether (11) extending through the aperture (Col 1, lines 62-65) and outwardly (11, Fig 2) through the top end;

an attaching member (referred to as support, lines 53-60) being attached to the pole for selectively attaching the aerosol can to the pole when the aerosol can is positioned on the lip (lip is identified in fig 2, the surface extending between the notch and the hook);

the tether (11) is removably coupled to an actuator (14) of the aerosol can (C) for selectively dispensing contents of the aerosol (Fig 3, Col 2, lines 69-72, Col 2 lines 1-7);

but does not include a notch extending into top end of the pole such that a lip is defined extending into a peripheral side of said pole, said lip being spaced from said top end and defining a ledge, the aerosol can being removably positioned on said ledge, said aperture being positioned nearer said bottom end than the top end; Monten discloses a notch (open upper end of 17, fig 1) extending into top end of the pole (12, fig 1) such that a lip (portion of 20, fig 1) is defined after extending the notch (fig 2) into a peripheral side of said pole, said lip (20, fig 2) being spaced from said top end and defining a ledge (20), the aerosol can being removably positioned (28, fig 4) on said ledge (20).

It would have been obvious to one of ordinary skill in the art to have modified the can holder portion of Bishop with the can holder portion of Monten which disclose a notch with a lip at the top end of the pole in order to tightly receive a container on an end of a extending pole as taught by Monten.

Referring to claims 2 and 11, Bishop does not disclose a range of the distance between the lip (portion of 40 against the notch 50 towards the end of the pole) and the top end of pole. It would have been obvious to one in skilled in the art to make the notch as long as necessary depending on how far the aerosol can needed to be extended from the pole.

Referring to claims 3 and 12, Bishop further discloses the pole (1) is selectively telescoping (Col 1, line 50) and including a plurality of sections slidably coupled together, the sections being selectively lockable in an extended position (Col 1, lines 50-53).

Referring to claims 4 and 14, Bishop further discloses a first end of the tether (11) being positioned adjacent to the aperture (Col 1, lines 62-65), a second end of the tether (11) being positioned adjacent to the top end (Fig 2), a hook (Fig 2, attached at the top end of the tether) being attached to the second end (end on which the can support is attached) of the tether (11) for engaging the actuator (Fig 3, lines 1-10).

Referring to claims 8 and 18, Bishop further discloses a handle (12) is being attached to the bottom end of the pole (1).

Referring to claims 5 and 6, Bishop further discloses a mechanical fastener attaching member (line 54, support) includes a strap (6) for extending around the aerosol can (C), a pin (7) and locking lever (8) that acts as a mechanical fastener being attached to the strap (6) for fastening the strap (Col 1, lines 56-60) around the aerosol can (C) but does not show a hook and loop type mechanical fastener. Kisner teaches to provide a hook and loop fastener in order to attach the aerosol can on the pole easily and efficiently.

It would have been obvious to one having ordinary skill in the art to replace the pin and locking lever type mechanical fastener of Bishop with the hook and loop (11, Fig 1) type mechanical fastener of Kisner in order to attach the aerosol can on the pole in an easier and more efficient manner.

Referring to claims 7 and 17, Bishop further discloses a handle (12) is being attached to the bottom end of the pole (1).

4. Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop (US 3,017,056) in view of Monten (US 4,566,313) and further in view of Kisner (US 6,033,560).

Referring to claims 9 and 19, Bishop discloses an aerosol can (C) support and actuating device comprising (Col. 1 lines 19-24):

an elongated pole (1) having a bottom end (end on which the handle is attached) and a top end (end on which the can support is attached), an aperture (Col 1, line 50) extending into an interior of the pole(1) near the bottom end, the pole(1) being selectively telescoping (Col 1, line 50) and including a plurality of sections slidably coupled together, the sections being selectively lockable in an extended position (Col 1, lines 50-53);

an elongated tether (11) extending through the aperture and outwardly through the top end (Fig 2), a first end of the tether being positioned adjacent to the aperture (Col 1, lines 62-65), a second end of the tether (11) being positioned adjacent to the top attached (Fig 2), a hook being attached to the second end of the tether (Fig 2, attached at the top end of the tether),

a handle (12) being attached to the bottom end (Col 1, lines 65-67) of the pole (1); and wherein the tether (11) is removably coupled to an actuator (14) of the aerosol can (C) for selectively dispensing contents of the aerosol (Fig 3, Col 2, lines 69-72, Col 2 lines 1-7) substantially according to claim 9, but does not show a hook and loop fastener according to claim 9. Kisner teaches to provide a hook and loop fastener in order to attach the aerosol can on the pole easily and efficiently. Kisner also discloses the attaching member (fig 1) including a strap (12) for extending around the aerosol can (60), a hook and a loop (11) fastener being attached to the strap (12, fig 3) for fastening the strap around the aerosol can (shown in fig 1).

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It would have been obvious to one having ordinary skill in the art to replace the pin and locking lever type mechanical fastener of Bishop with the hook and loop (11, Fig 1) type mechanical fastener of Kisner in order to attach the aerosol can on the pole in an easier and more efficient manner as taught by Kisner.

It would also have been obvious to one of ordinary skill in the art to have modified the attachment member of Bishop consisting of plates on the top end of the pole with the attachment member with strap portions of Kisner in order to have a strap that is able to be twisted, fixed, or tied near the top end of the pole as taught by Kisner.

Bishop also does not disclose an attaching member being attached to the pole for selectively attaching the aerosol can to the pole when the aerosol can is positioned on the lip. Monten discloses an the aerosol can is positioned on the lip (20, fig 2), the attaching member (26, 23) being positioned generally adjacent to the top end of the pole.

It would have been obvious to modify the holder of Bishop with the notch holder of Monten with a lip portion to tightly secure the container to the top end of the pole as taught by Monten.

Citation of Related Prior Art

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mercur (US 2,720,422), Mikhail (US 4,969,580), Smrt (US

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5,368,202), Casas (US 5,918,565), Troudt (US 6,378,922) also disclosed aerosol can holding and operating devices.

Remarks

6. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

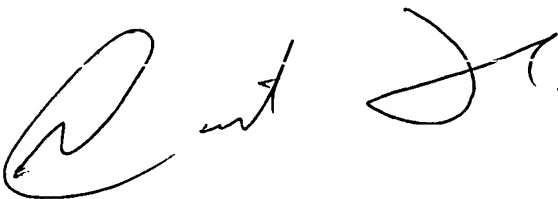
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navneet K. Khaira whose telephone number is 571-272-7142. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mar Y. Michael can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 51-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Navneet Sonia Khaira
Examiner
Art Unit 3754

10/30/05



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